Polyclinic Medical Center of Harrisburg *and* District 1199P, Service Employees International Union, AFL–CIO, CLC and Pennsylvania Nurses Association

Pennsylvania State Education Association-NEA *and* District 1199P, Service Employees International Union, AFL–CIO, CLC and Pennsylvania Nurses Association. Cases 4–CA–21904, 4–CA–22113, 4–CB–6975, and 4–CB–7028

January 11, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUESDALE

On June 30, 1994, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent Employer and the Respondent Union each filed exceptions and supporting briefs, and the General Counsel filed a brief in answer to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The Respondents except, inter alia, to (1) the judge's finding that by entering into a collective-bargaining agreement containing a maintenance-of-membership clause the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act,[2] and (2) the judge's recommended conditional remedy requiring that the Respondents jointly and severally reimburse all moneys exacted from any employees who are shown to have joined or remained members of the Respondent Union as a result of the maintenance-of-membership provision. The Respondents first contend that a maintenance-of-membership clause is not a true union-security clause and, therefore, could not have had the effect of coercing employees into joining the Union or remaining members and, secondly, that absent a showing that employees were actually coerced into membership, there is no basis for finding the violation or for providing a remedy. We disagree. A maintenance-of-membership contract provision is a long-recognized form of union security which requires that any employee who is or becomes a member of the representing union must remain a member of that union for the duration of the collective-bargaining agreement. Inasmuch as the collective-bargaining agreement between the Respondent Employer and the Respondent Union was entered into at a time when it was not established that the Respondent Union represented a majority of the unit employees, the existence of the clause itself, without more, unlawfully discriminates among employees by encouraging membership in the Respondent Union. See *Roberts Electric Co.*, 227 NLRB 1312, 1320 (1977). Consequently, insofar as finding the above violations are concerned, it is immaterial that the record before us does not identify specific employees by name and circumstance of membership because the coercive effect on the employees generally has been established. As the judge has directed in his Order, however, the extent of the make-whole reimbursement remedy remains to be resolved in the compliance process, specifically, through identification of which employees—irrespective of when they became members of the Respondent Union—remained members of that Union because of the unlawful maintenance-of-membership clause. Those employees who are shown to have voluntarily become and/or remained members of the Respondent Union would not, by this formula, be entitled to reimbursement of membership dues or fees.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent Employer, Polyclinic Medical Center of Harrisburg, Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, and the Respondent Union, Pennsylvania State Education Association-NEA, its officers, agents, and representatives, shall take the action set forth in the Order.

Barbara A. O'Neill, Esq., for the General Counsel.
Norman White and *Robert G. Haas, Esqs.*, for Employer Polyclinic.
R. Michael Kirkpatrick, Esq., for Pennsylvania Nurses Association (PNA).
Markowitz & Richman, Esqs., for Pennsylvania State Education Association-NEA (PSEA).

DECISION

STATEMENT OF THE CASE

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in the above cases on July 20, September 15, 23–24, and October 29, 1993. Consolidated complaints issued on September 28 and November 3, 1993. The General Counsel alleges that on or about July 1, 1993, Respondent Employer Polyclinic granted recognition to and entered into and has since maintained and enforced a collective-bargaining agreement with

[1] The Respondent Employer and the Respondent Union have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Although the Respondent Employer excepts in general to the judge's findings of violations of Sec. 8(a)(3), (2), and (1), its arguments with respect to the maintenance-of-membership clause are restricted to his findings relating to the 8(b) violations.

Respondent Union PSEA as the exclusive collective-bargaining representative of an appropriate unit of its employees[1] even though Respondent PSEA did not represent a majority of the unit employees. That said agreement provides:

> All employees who are or shall become members of the [PSEA] shall remain members over the full duration of this agreement, except an employee who has joined the [PSEA] may resign her/his membership therein during the period of fifteen (15) days prior to the expiration of this agreement. . . . [A]n employee shall be considered a member in good standing if the member timely tenders her/his periodic dues. The payment of dues shall be deemed a condition of employment;

and that Respondent Polyclinic thereby rendered unlawful assistance and support to a labor organization and discriminated in regard to hire or tenure or terms and conditions of employment of its employees encouraging membership in a labor organization, in violation of Section 8(a)(1), (2), and (3) of the National Labor Relations Act. The General Counsel further alleges that Respondent PSEA, by the above conduct, has restrained and coerced employees in the exercise of their Section 7 rights and has been attempting to cause and is causing an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, in violation of Section 8(b)(1)(A) and (2) of the Act. Further, the General Counsel alleges that commencing also on or about July 1, 1993, Respondent Employer Polyclinic failed and refused to bargain collectively and in good faith with PNA as the exclusive collective-bargaining representative of the above unit employees, in violation of Section 8(a)(1) and (5) of the Act. Respondents Polyclinic and PSEA deny, inter alia, violating the Act as alleged.

A hearing was held on the issues thus raised in Harrisburg, Pennsylvania, on April 18, 1994. On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT[2]

Respondent Employer Polyclinic is admittedly engaged in commerce within the meaning of Section 2(5), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act as alleged. Charging Party PNA and Respondent PSEA are admittedly labor organizations as alleged. Polyclinic and PNA were parties to a collective-bargaining agreement covering the above unit employees, effective by its terms from July 1, 1990, to June 30, 1993. (See G.C. Exh. 2.)

Michael Kirkpatrick, PNA's director of labor relations, testified that PNA has represented the above Polyclinic unit employees ''since the early 1970s,'' noting that General Counsel's Exhibit 2 is the most recent collective-bargaining agreement between the parties. He explained that one Debra Ferguson ''was a former labor representative for PNA who now works for PSEA''; that she had ''the responsibility for negotiating the collective bargaining agreement between the parties and the day to day servicing of that contract''; that she ''was the primary contact person from the [unit] nurses we represented and the PNA''; and that she ''ceased working'' for PNA ''on July 1, 1993.''

Norman White, an attorney for Respondent Polyclinic, testified that he was ''the chief spokesperson'' for Polyclinic ''responsible for [its contract] negotiations with PNA''; that the ''most recent [contract] negotiations'' between Polyclinic and PNA commenced on May 28, 1993, and the parties had ''seven meetings'' up to July 1, 1993; and that he was in fact ''scheduled to negotiate with PNA'' ''on July 1.'' White acknowledged that ''on that day [Respondent] PSEA, through Alfred Nelson, demanded recognition from [Polyclinic] for those same employees''; that Nelson ''attempted to present authorization cards . . . to show majority status''; and that he, White, ''agreed to have a third party examine those cards'' and ''turned over a payroll list for the employees in the unit'' (see G.C. Exh. 6). White added that Polyclinic ''also has a bargaining unit of service personnel represented by District 1199P''; their ''contract'' also ''expired on June 30''; and ''our objective had been to try to negotiate and settle both contracts by June 30'' because ''we had a pattern of settling with the nurses and settling late[r] with 1199.'' White explained:

> What we [had] tried to do was finish up with PNA [on Friday June 25, 1993] . . . and then follow up with a negotiated settlement with 1199 on the 29th and 30th if necessary. That was the schedule we had established several weeks before with both Unions. . . . [We later] arranged a meeting with PNA on July 1 when we failed to reach an agreement with them the prior week.

The scheduled collective-bargaining meeting was in fact held about 10 a.m. on July 1 at the nearby Days Inn Airport Hotel. However, prior to the commencement of that meeting, on the morning of July 1, White ''noticed'' that the hotel bulletin board referred to the Union representing the Polyclinic employees as ''PPNA'' and not ''PNA.'' Further, White ''was confronted by two male negotiators from the PNA bargaining team . . . and they said . . . we have a new organization entitled Polyclinic Professional Nurses Association'' and have ''hired Deb Ferguson as . . . chief spokesperson.'' Then, as White recalled, ''Nelson approached me . . . and told me that PSEA was claiming to represent a majority of the RNs and LPNs at Polyclinic.'' In addition, White was also ''told'' that Michael Kirkpatrick, PNA's director of labor relations, ''was up in the caucus room''; that he, Kirkpatrick, ''would like to see me''; and that White was ''asked if [he] would [instead] assist in physically removing [Kirkpatrick] from the property.'' White ''went up to [the] conference room'' and ''met'' with Kirkpatrick.

White related his July 1 meeting with Kirkpatrick, as follows:

> Mr. Kirkpatrick told me [White] that Deb Ferguson had been terminated by him [and] that as far as he [Kirkpatrick] was concerned Polyclinic had a duty to continue recognizing and negotiating with PNA. I told him that I was well aware of my obligation to continue recognizing PNA . . . [and] that I would continue to honor that obligation. But, I had a job to do for Poly-

[1] The appropriate unit consists of:

All employees employed by the Employer as RNs and LPNs and excluding all other employees, guards, watchmen and supervisors.

[2] Counsel for Respondent PSEA's motion to reopen the hearing in this proceeding was denied by order dated June 16, 1994.

> clinic and I was there to negotiate a contract [and] that's exactly what I was going to do . . . . I also told him . . . that I understood that PSEA was downstairs . . . claiming to represent a majority and if they could somehow prove that to me at some point I would deal with them . . . . He . . . told me that he would file an unfair labor practice charge. . . . I told him that he had every right to do so and that I had a job to do today for Polyclinic and I went ahead and did it.

White next recalled that, ''when [he had] first entered the Days Inn Hotel'' on July 1, Nelson had approached him with ''a handful of cards,'' and

> I [White] told him [Nelson] that I would not take the cards. I would not look at the cards. I told him that . . . PSEA is a pretty powerful Union in this State; they ought to be able to find someone who can check the cards. And, I think I suggested that they find someone from the Pennsylvania Labor Relations Board. . . . I did in fact look at one card, not to see who signed it, but to see its form, and I did tell Alf [Nelson] that I wasn't too happy with the card. . . . I saw the word election on the card; . . . I'm an old Board agent; and that just flashed a little warning sign in my mind. I also saw the words . . . collective-bargaining authorization or something like that . . . . I thought it might not be a valid card for purposes of establishing majority status.

Although all the PSEA ''cards,'' as discussed further below, contain the heading: PSEA ''Collective Negotiations Authorization Card,'' they only provide that the named employees ''hereby designate and authorize'' PSEA, ''its agents or representatives,'' ''to petition for a bargaining agent election.'' (See G.C. Exh. 7 and Tr. pp. 71–72.)

White, as he further testified, together with David Schreiber, director of employee relations at Polyclinic, then ''arranged for [a] list [of unit personnel], G.C. Exh. 6, to be brought out to the Hotel.'' And, ''PSEA at some point during the afternoon arranged for Dr. Arnold Hillman to come to the Days Inn Hotel'' where he was given both the ''cards'' and ''list.'' ''At some point during the afternoon of July 1 . . . Dr. Hillman announced . . . the results of his card check.'' As stated in Dr. Hillman's letter subsequently mailed to White and Nelson (see R. Emp. Exh. 1), 339 of some 582 ''prospective members'' had signed the ''cards'' ''designating the [PSEA] as [sic] its agents or representatives to petition for a bargaining agent election.'' (See G.C. Exhs. 6, 7, and 8, par. 3.)[3]

White, still testifying about the events of July 1 at the hotel, then related:

> [W]hen I got done with Mr. Kirkpatrick . . . we started right in negotiating [with the PPNA representative]. We went past midnight and finished around 1 A.M. on July 2 [with a contract settlement agreement, see G.C. Exh. 4]. . . . At no time was Mr. Kirkpatrick present . . . he [had] left . . . .

[3] Sharon Dubs, one unit employee, identified her signature on one such ''card.'' See Tr. pp. 63–64.

General Counsel's Exhibit 4, the ''contract settlement agreement,'' was purportedly between Polyclinic and PSEA. See also General Counsel's Exhibit 5, the contract later executed by the parties. White, however, testified:

> Q. When did you recognize PSEA as the bargaining representative of the nurses on July 1?
>
> A. When we finished our agreement . . . the contract settlement agreement . . . . When that was signed, then I turned my attention to the cards, the report by Dr. Hillman, which at that point was an oral report, and I hand wrote a recognition agreement [G.C. Exh. 3], and we did recognize PSEA based on the findings of the card count and our feeling that PNA no longer represented a majority of our nurses . . . .

The ''contract settlement agreement,'' General Counsel's Exhibit 4, recites, inter alia, ''All references in the collective-bargaining agreement to [PNA] shall be changed to [PSEA].'' The ''recognition agreement,'' General Counsel's Exhibit 3, recites, inter alia, that ''no successor agreement has been negotiated between the Employer and PNA,'' and PSEA ''on July 1 . . . presented the Employer with a substantial number of authorization cards signed by members of the bargaining unit represented by PNA . . . .'' The ''recognition agreement'' further states:

> as a result of the presentation of the cards and the card check . . . it [the Employer] has objective evidence that PNA is no longer the majority representative of its employees and that . . . PSEA is the majority representative . . . .

On cross-examination, White admitted that on July 1 he ''sat down and negotiated with this group called PPNA without a showing of majority support'' and he was later ''told the results of [the] card check.'' (See R. Emp. Exh. 1.) White added: ''We [Polyclinic and PPNA] kept negotiating, because I refused to recognize PSEA until I had a contract'';

> They chose to call themselves PPNA. They could have called themselves the Boston Red Sox. I was going to deal with those people because I had to get a contract.

White ''wouldn't deny that'' ''when Mr. Kirkpatrick showed up [on July 1] he [Kirkpatrick] told [White] that he was prepared to sit down and negotiate at that time'' as the PNA representative; and, in response, White ''made it pretty clear to him that [White] [was not] going to sit down and negotiate with him, but [was] going to negotiate with that committee.'' The ''contract settlement agreement,'' General Counsel's Exhibit 4, was later ''signed'' by Schreiber for Polyclinic and Debbie Ferguson for PSEA. (See also G.C. Exh. 5.) White, when asked ''when did PPNA become PSEA'' during this ''scenario,'' responded: ''there was never a moment when it was announced it was anointed as one or the other.'' White admittedly was anxious to continue to agreement Polyclinic's ''concessionary bargaining''; he ''had to get something within the budget of [his] board.''[4]

[4] Elsewhere, White asserted, inter alia, in support of Polyclinic's claim that ''it had a good faith belief PNA didn't represent a majority of employees as of June 30, 1993,'' ''that PNA [only] enjoyed

Continued

Alfred Nelson, director of organizing and media relations for Respondent PSEA, testified that he was present at the above meeting on July 1; that he, on behalf of PSEA, ''asked to be recognized as the bargaining agent'' for the Polyclinic unit employees predicated on ''cards'' purportedly signed by a ''majority'' of the unit employees; and that he presented the ''cards'' for examination. Nelson claimed that he was ''involved in the solicitation of [the] authorization cards'' during June 1993; that he was in fact ''the lead contact'' and met with some unit employees and/or ''Local leadership'' where ''authorization cards'' were distributed; that he met with a ''larger group of representatives from the nurses and the PNA affiliate of Polyclinic''; that ''arrangements'' were made for him ''to meet the entire bargaining team'' where he was told ''why they wanted to leave PNA and what they were looking for from PSEA''; and that General Counsel's Exhibit 7 ''appears to be the [copies of the] cards that [he] presented to Dr. Hillman'' on July 1 at the Days Inn Hotel. Nelson assertedly was unaware of the location of the ''original'' ''cards'' at the time of trial. (See Tr. pp. 54–61, 64, 69, 71–72.)

Elsewhere, Nelson testified:

> Q. Now in particular here at Polyclinic in those two meetings, what precisely did you tell these individuals would be the purpose that would be effected in actually signing one of those cards that are G.C. Exh. 7?
>
> A. I went through a variety of instructions. For example, that we definitely needed their signature and a date. The fact that signing a card doesn't mean that you're joining a Union and things along that line. Additionally, I explained to them the two options they had and we had as to how the cards would be used . . . either the . . . filing of a [representation] petition for an election or using the card to request voluntary recognition. But the end result was that these cards would show that these individuals wanted to be represented by PSEA for the purposes of collective bargaining.
>
> . . . .
>
> Q. Your second meeting with the negotiating committee, in handing out cards to these individuals, what was your understanding as to what they would do with the cards?
>
> A. After we got through the introductory phase and answered a number of questions, and they had made a commitment that they would like to affiliate with PSEA and have us as the collective-bargaining agent, they requested the cards and, as they told me, they would run the floor and work out an arrangement whereby they could approach a number of people to sign the cards and explain why they were signing the cards.
>
> Q. Did you give them, those individuals, any instructions on how to solicit these cards and what to say to potential signers of the cards?
>
> A. Yes, I did. Basically, number one, not to interfere with any of their work . . . . Additionally, for them to explain that signing a card did not mean that they were committing to vote for, if there was an election, or join the Union. But the cards were being collected so that the Local could change affiliates and that we would either file for an election or seek voluntary recognition.

Nelson claimed that he had in fact ''solicit[ed] signers for authorization cards.'' However, he acknowledged that he had spoken only to ''between 50 and a 100'' of the some 582 unit employees assertedly explaining to them the ''purpose of the cards,'' ''and all other cards would have been solicited and/or explained, if there was such explanation, by other persons'' ''and [he] was not present when any of those people [were] soliciting cards.''

General Counsel's Exhibit 5, as noted above, is the ''Agreement Between Polyclinic Medical Center and Pennsylvania State Education Association'' effective from July 1, 1993, to June 30, 1995. The ''Agreement'' contains, inter alia, provisions pertaining to ''Maintenance Of Membership'' in article 33, as follows:

> All employees who are or shall become members of the [PSEA] shall remain members over the full duration of this agreement, except an employee who has joined the [PSEA] may resign her/his membership therein during the period of fifteen (15) days prior to the expiration of this agreement. . . . [A]n employee shall be considered a member in good standing if the member timely tenders her/his periodic dues. The payment of dues shall be deemed a condition of employment.

See also General Counsel's Exhibits 1(m); 1(o), par. 5(a); 1(s), par. 5(a); 1(x); 1(dd), par. 7(a); 1(ee), par. 7(a); and 8.

The evidence of record detailed supra is essentially undisputed. However, as discussed further below, I do not credit the unsubstantiated assertions by Alfred Nelson to the effect that some solicited unit employees were told that the ''cards'' which they were being asked to sign or have others sign were to ''either file for an election or seek voluntary recognition.'' Nelson's testimony in this and related respects was vague, unclear, incomplete, and totally unsubstantiated. In short, the credible evidence of record here does not support any assertion to the effect that the card signers were in fact told that a purpose of such ''cards'' was other than the purpose clearly stated on the ''cards,'' that is, to ''designate and authorize'' PSEA, ''its agents or representatives,'' ''to petition for a bargaining agent election.'' I also do not credit the assertions of Norman White, providing additional reasons in support of Polyclinic's claim that ''it had a good faith belief PNA didn't represent a majority of employees as of June 30, 1993,'' such as, for example, ''that PNA [only] enjoyed [the membership of] somewhere between 30 to 35 percent of those eligible to become members.'' The essentially undisputed and documentary evidence of record makes it clear that these and related assertions by the Employer are afterthoughts and not the reasons for the Employer's July 1 withdrawal of recognition.

Discussion

In the instant case, the Employer summarily withdrew recognition from PNA as the incumbent collective-bargaining representative of an appropriate unit of its employees and promptly granted recognition to PSEA because, as claimed in their executed ''recognition agreement'' (G.C. Exh. 3),

[the membership of] somewhere between 30 to 35 percent of those eligible to become members.'' Tr. pp. 19–21.

> as a result of the presentation of the cards and the card check . . . it [the Employer] has objective evidence that PNA is no longer the majority representative of its employees . . . and that . . . PSEA . . . is the majority representative of its employees in the unit formerly represented by PNA . . . .

As the United States Supreme Court explained in *NLRB v. Curtin Matheson Scientific*, 494 U.S. 775 (1990), an employer who wishes to withdraw recognition from an incumbent union under similar circumstances may do so

> by showing that at the time of the refusal to bargain . . . either . . . the union did not in fact enjoy majority support or . . . the employer had a good faith doubt founded on a sufficient objective basis of the union's majority support.

Further, in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 584, 606–609 (1968), the Supreme Court, concerned with the issue of ''whether the cards [relied on there were] reliable enough to support a bargaining order,'' explained:

> The customary approach of the Board in dealing with allegations of misrepresentation by the [u]nion and misunderstanding by the employees of the purpose for which the cards were being solicited has been set out in *Cumberland Shoe Corp*., 144 NLRB 1268 (1963) and reaffirmed in *Levi Strauss & Co*., 172 NLRB [732] (1968). Under the *Cumberland Shoe* doctrine, if the card itself is unambiguous (i.e., states on its face that the signer authorizes the [u]nion to represent the employee for collective-bargaining purposes and not to seek an election), it will be counted unless it is proved that the employee was told that the card was to be used *solely* for the purpose of obtaining an election.
>
> In resolving the conflict among the circuits in favor of approving the Board's *Cumberland* rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless [the] language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.

See also *Nissan Research & Development*, 296 NLRB 598 (1989), and cases cited.

It is clear here that the Employer, in summarily withdrawing recognition from the incumbent PNA and granting recognition to PSEA on July 1, was relying solely on the ''cards'' purportedly signed by its unit employees. However, those ''cards'' only ''designate and authorize'' PSEA, ''its agents or representatives, to petition for a bargaining agent election.'' Those ''cards'' do not authorize PSEA to represent the employee signers for collective-bargaining purposes. There is no credible evidence in this record that employee card signers were in fact told, in effect, that they thereby authorized the PSEA to represent them for collective-bargaining purposes. As noted, I have rejected as incredible the unsubstantiated assertions by PSEA Representative Nelson that some solicited unit employees were told that the ''cards'' which they were being asked to sign or have others sign were to ''either file for an election or seek voluntary recognition.'' And, as explained by the Supreme Court in *Gissel Packing*, supra,

> employees should be bound by the clear language of what they sign unless [the] language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.

No such showing has been made here.[5]

This record does not establish

> that on the date recognition was withdrawn the [incumbent] Union did not in fact enjoy majority status, or . . . a sufficient objective basis for a reasonable doubt of the Union's majority status at the time the Employer refused to bargain.

The Employer, therefore, by its conduct, violated Section 8(a)(1) and (5) of the Act, as alleged.[6]

In addition, where, as here, the Employer enters into a collective-bargaining agreement containing a union-security clause with a union which has not been shown to have been validly designated as the bargaining agent by a majority of its unit employees, the Employer violates the proscriptions of Section 8(a)(1), (2), and (3) of the Act, and the Union in turn violates the proscriptions of Section 8(b)(1)(A) and (2) of the Act. See *Caro Bags*, 285 NLRB 656 (1987); *Safeway Stores*, 276 NLRB 944 (1985); *Rainey Security Agency*, 274 NLRB 269 (1985); and cases cited. As demonstrated above, the ''recognition agreement'' and ''contract settlement agree-

[5] Although all the PSEA ''cards,'' as noted above, contain the heading: PSEA ''Collective Negotiations Authorization Card,'' they *only* provide that the named employees ''hereby designate and authorize'' PSEA, ''its agents or representatives,'' ''to petition for a bargaining agent election.'' Indeed, on this record, I would not find such ''cards'' to be ''ambiguous'' or ''dual purpose'' ''cards.'' Cf. *Nissan Research & Development*, supra, and cases cited. In any event, the ''cards'' do not clearly and unambiguously authorize PSEA to represent the unit employees as their collective-bargaining representative and the credible evidence of record is similarly deficient. Further, I note that counsel for Polyclinic, on July 1, as he testified, ''saw the word election on the card . . . and that just flashed a little warning . . . it might not be a valid card for purposes of establishing majority status.'' However, that did not stop counsel for Polyclinic because he apparently would have even then bargained with, as he put it, ''the Boston Red Sox . . . to get a contract.''

[6] Counsel for Respondent PSEA states in his posthearing brief (Br. 13) that Polyclinic's July 1 ''reliance on a number of factors justified its decision to withdraw recognition from PNA.'' However, as noted supra, I do not credit the Employer's later attempted reliance on cited ''additional reasons'' for its claimed good-faith doubt. The ''recognition agreement'' makes it clear that ''as a result of the presentation of the cards and the card check . . . it [the Employer] has objective evidence that PNA is no longer the majority representative of its employees . . . and that . . . PSEA is the majority representative.'' These ''additional reasons'' were not cited when recognition was summarily withdrawn and granted. On this record, I reject these ''additional reasons'' as simply ''afterthoughts.'' See *Gregory's, Inc*., 242 NLRB 644, 648 (1979); and *Triplett Corp*., 234 NLRB 985 (1978), enf. denied 619 F.2d 586 (6th Cir. 1980). Moreover, these cited ''additional reasons,'' first advanced during and after trial, also do not provide ''a sufficient objective basis for a reasonable doubt of the Union's majority status at the time the Employer refused to bargain.'' See *Gregory's, Inc*., supra; and *Triplett Corp*., supra.

ment'' entered into here by Polyclinic and PSEA were predicated on ''cards'' which do not validly and sufficiently designate PSEA as collective-bargaining representative for the unit employees. And, as the Board majority restated in *Nissan Research & Development*, supra,

> if unions wish to perfect their majority claims on the basis of authorization cards they should do so with cards which clearly state their purpose.

In sum, this record amply demonstrates, as alleged, that on or about July 1, 1993, Respondent Employer Polyclinic granted recognition to and entered into and has since maintained and enforced a collective-bargaining agreement with Respondent PSEA as the exclusive collective-bargaining representative of an appropriate unit of its employees even though Respondent PSEA did not represent a majority of the unit employees; that said agreement provides:

> All employees who are or shall become members of the [PSEA] shall remain members over the full duration of this agreement, except an employee who has joined the [PSEA] may resign her/his membership therein during the period of fifteen (15) days prior to the expiration of this agreement. . . . [A]n employee shall be considered a member in good standing if the member timely tenders her/his periodic dues. The payment of dues shall be deemed a condition of employment;

and that Respondent Polyclinic thereby rendered unlawful assistance and support to a labor organization and discriminated in regard to hire or tenure or terms and conditions of employment of its employees encouraging membership in a labor organization, in violation of Section 8(a)(1), (2), and (3) of the National Labor Relations Act. Respondent PSEA, by the above conduct, has restrained and coerced employees in the exercise of their Section 7 rights and has been attempting to cause and is causing an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, in violation of Section 8(b)(1)(A) and (2) of the Act. And, commencing also on or about July 1, 1993, Respondent Employer Polyclinic failed and refused to bargain collectively and in good faith with PNA as the exclusive collective-bargaining representative of the above unit employees, in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent Employer Polyclinic is engaged in commerce within the meaning of Section 2(5), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act as alleged.

2. Charging Party PNA and Respondent PSEA are labor organizations as alleged.

3. On or about July 1, 1993, Respondent Employer Polyclinic granted recognition to and entered into and has since maintained and enforced a collective-bargaining agreement with Respondent PSEA as the exclusive collective-bargaining representative of an appropriate unit of its employees[7] even though Respondent PSEA did not represent a majority of the unit employees; said agreement provides:

> All employees who are or shall become members of the [PSEA] shall remain members over the full duration of this agreement, except an employee who has joined the [PSEA] may resign her/his membership therein during the period of fifteen (15) days prior to the expiration of this agreement. . . . [A]n employee shall be considered a member in good standing if the member timely tenders her/his periodic dues. The payment of dues shall be deemed a condition of employment;

and Respondent Polyclinic thereby rendered unlawful assistance and support to a labor organization and discriminated in regard to hire or tenure or terms and conditions of employment of its employees encouraging membership in a labor organization, in violation of Section 8(a)(1), (2), and (3) of the National Labor Relations Act.

4. Respondent PSEA, by the above conduct, has restrained and coerced employees in the exercise of their Section 7 rights and has been attempting to cause and is causing an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, in violation of Section 8(b)(1)(A) and (2) of the Act.

5. Commencing also on or about July 1, 1993, Respondent Employer Polyclinic failed and refused to bargain collectively and in good faith with PNA as the exclusive collective-bargaining representative of the above unit employees, in violation of Section 8(a)(1) and (5) of the Act.

6. The unfair labor practices found above affect commerce, as alleged.

REMEDY

To remedy the violations found above, Respondent Employer Polyclinic and Respondent Union PSEA will be directed to cease and desist from engaging in the conduct found unlawful, and like or related conduct, and to post the attached notices. Specifically, to effectuate the purposes and policies of the Act, Polyclinic will be directed to cease and desist from contributing support or assistance to PSEA or any other labor organization of its employees; recognizing and bargaining with PSEA as the exclusive bargaining agent of its employees in the above appropriate unit unless and until PSEA shall have demonstrated its exclusive majority status pursuant to a Board-conducted representation election among the unit employees; and giving effect to the collective-bargaining agreement of July 1, 1993, between Polyclinic and PSEA, or any extension, renewal, or modification thereof, provided, however, that nothing here shall require Polyclinic to vary or abandon any wages, hours, or other substantive features of its relations with the above unit employees which Polyclinic had established in the performance of said agreement, or to prejudice the assertion by the employees of any rights they may have thereunder. PSEA will similarly be directed to cease and desist from acting as the exclusive bargaining agent of Polyclinic's employees in the above unit unless and until PSEA shall have demonstrated its exclusive majority status pursuant to a Board-conducted representation election among the unit employees, and giving effect to the collective-bargaining agreement of July 1, 1993, between Polyclinic and PSEA, or any extension, renewal, or

[7] The appropriate unit consists of:
All employees employed by the Employer as RNs and LPNs and excluding all other employees, guards, watchmen and supervisors.

modification thereof. And, Polyclinic will be affirmatively directed to withdraw and withhold all recognition from PSEA as the exclusive collective-bargaining agent of its employees in the above appropriate unit unless and until PSEA shall demonstrate its exclusive majority status pursuant to a Board-conducted representation election among the unit employees.

Counsel for the General Counsel also seeks as a remedy, and counsel for Respondents oppose, an order directing Polyclinic and PSEA jointly and severally to reimburse, with interest, the above unit employees for all dues and fees unlawfully withheld from them as a consequence of the union-security clause contained in the collective-bargaining agreement found unlawful. The pertinent contractual language provides:

> All employees who are or shall become members of the [PSEA] shall remain members over the full duration of this agreement, except an employee who has joined the [PSEA] may resign her/his membership therein during the period of fifteen (15) days prior to the expiration of this agreement. . . . [A]n employee shall be considered a member in good standing if the member timely tenders her/his periodic dues. The payment of dues shall be deemed a condition of employment.

On this record, to effectuate the purposes and policies of the Act, the unit employees should be made whole for all moneys, if any, unlawfully exacted from them as a consequence of the union-security clause contained in the collective-bargaining agreement found unlawful. See *Caro Bags*, supra, and *Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533 (1943). However, I note that the Board, in dealing with related remedial issues, has ruled that ''absent other evidence of coercion'' ''the order requiring the employer and the union to reimburse employees must be amended to exclude those employees who were union members before they transferred to or otherwise commenced work at the employer's . . . store'' (*Safeway Stores*, supra); or that its ''order does not include those employees who voluntarily became members . . . prior to their employment'' (*Baines Service Systems*, 248 NLRB 563 (1980)). And, as the Board explained in *SMI of Worcester*, 271 NLRB 1508, 1510 (1984):

> Since in neither unit did a majority of employees freely choose [the union] as their bargaining representative, the dues required under the union-security clauses of the contracts must be refunded to the employees who had not voluntarily become members . . . prior to execution of the contracts. See *Carpenters Local 60 v. Power Co.*, 365 U.S. 651 (1961); *Virginia Electric & Power Co. v. NLRB*, supra. . . . There is some indication in the record . . . that no dues were deducted . . . . However, as the evidence is not sufficient to establish that no dues were withheld we will proceed to order reimbursement. Doing so will place no additional obligation on [the union or the employer] in the event no dues were withheld. . . . Accordingly, we will modify . . . the order so as to require [the union and the employer] to make whole those unit employees who did not voluntarily become members . . . before the execution of the contracts and who had dues deducted under their contract.

In the instant case, there is no independent evidence of checkoff or coercion. Under the circumstances, although the Order should direct that Polyclinic and PSEA jointly and severally reimburse, with interest, the above unit employees for all initiation fees, dues, or other moneys illegally exacted from them pursuant to the above unlawful collective-bargaining agreement, the Order should also provide that reimbursement does not extend to those employees who voluntarily joined and/or voluntarily maintained their memberships in PSEA, which can be appropriately established, if necessary, in compliance proceedings. Interest should be computed as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, Polyclinic will be directed to cease and desist from failing or refusing to bargain in good faith with PNA as the exclusive bargaining agent of its employees in the above appropriate unit, and, affirmatively, on request, bargain in good faith with the Union and if an understanding is reached embody that understanding in a signed collective-bargaining agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

A. The Respondent Employer, Polyclinic Medical Center of Harrisburg, Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Contributing support or assistance to Pennsylvania State Education Association-NEA (PSEA) or any other labor organization of its employees.

(b) Recognizing and bargaining with PSEA as the exclusive bargaining agent of its employees in the following appropriate unit unless and until PSEA shall have demonstrated its exclusive majority status pursuant to a Board-conducted representation election among the unit employees. The appropriate bargaining unit consists of:

> All employees employed by Polyclinic as RNs and LPNs and excluding all other employees, guards, watchmen and supervisors.

(c) Giving effect to the collective-bargaining agreement of July 1, 1993, between Polyclinic and PSEA, or any extension, renewal, or modification thereof, provided, however, that nothing shall require Polyclinic to vary or abandon any wages, hours, or other substantive features of its relations with the above unit employees which Polyclinic had established in the performance of the agreement, or to prejudice the assertion by the employees of any rights they may have thereunder.

(d) Failing or refusing to, on request, bargain in good faith with PNA as the exclusive bargaining agent of its employees in the above appropriate unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from PSEA as the exclusive collective-bargaining agent of its employees in the above appropriate unit unless and until PSEA shall demonstrate its exclusive majority status pursuant to a Board-conducted representation election among the unit employees.

(b) Jointly and severally with PSEA reimburse, with interest, the above unit employees for all initiation fees, dues, or other moneys illegally exacted from them pursuant to the above unlawful collective-bargaining agreement, provided, however, that reimbursement does not extend to those employees who voluntarily joined and/or voluntarily maintained their memberships in PSEA, as provided in the Board's decision.

(c) On request, bargain in good faith with Pennsylvania Nurses Association (PNA) as the exclusive representative of the employees in the above appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(d) Post at its facility copies of the attached notices marked ''Appendices A and B.''[9] Copies of the notices, on forms provided by the Regional Director for Region 4, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The Respondent Union, Pennsylvania State Education Association-NEA (PSEA), its officers, agents, and representatives, shall

1. Cease and desist from

(a) Acting as the exclusive bargaining agent of Polyclinic's employees in the following appropriate unit unless and until PSEA shall have demonstrated its exclusive majority status pursuant to a Board-conducted representation election among the unit employees. The appropriate bargaining unit consists of:

> All employees employed by Polyclinic as RNs and LPNs and excluding all other employees, guards, watchmen and supervisors.

(b) Giving effect to the collective-bargaining agreement of July 1, 1993, between Polyclinic and PSEA, or any extension, renewal, or modification thereof.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Polyclinic reimburse, with interest, the above unit employees for all initiation fees, dues, or other moneys illegally exacted from them pursuant to the above unlawful collective-bargaining agreement, provided, however, that reimbursement does not extend to those employees who voluntarily joined and/or voluntarily maintained their memberships in PSEA, as provided in the Board's decision.

(b) Post at its union offices copies of the attached notice marked ''Appendix B.''[10] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Polyclinic at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[10] See fn. 9, above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT contribute support or assistance to Pennsylvania State Education Association-NEA (PSEA) or any other labor organization of our employees.

WE WILL NOT recognize and bargain with PSEA as the exclusive bargaining agent of our employees in the following appropriate unit unless and until PSEA shall have demonstrated its exclusive majority status pursuant to a Board-conducted representation election among the unit employees. The appropriate bargaining unit consists of:

> All employees employed by POLYCLINIC as RNs and LPNs and excluding all other employees, guards, watchmen and supervisors.

WE WILL NOT give effect to the collective-bargaining agreement of July 1, 1993, between Polyclinic and PSEA, or

any extension, renewal, or modification thereof, provided, however, that nothing shall require Polyclinic to vary or abandon any wages, hours, or other substantive features of its relations with the above unit employees which Polyclinic had established in the performance of the agreement, or to prejudice the assertion by the employees of any rights they may have thereunder.

WE WILL NOT fail or refuse to, on request, bargain in good faith with Pennsylvania Nurses Association (PNA) as the exclusive bargaining agent of our employees in the above appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from PSEA as the exclusive collective-bargaining agent of our employees in the above appropriate unit unless and until PSEA shall demonstrate its exclusive majority status pursuant to a Board-conducted representation election among the unit employees.

WE WILL jointly and severally with PSEA reimburse, with interest, the above unit employees for all initiation fees, dues, or other moneys illegally exacted from them pursuant to the above unlawful collective-bargaining agreement, provided, however, that reimbursement does not extend to those employees who voluntarily joined and/or voluntarily maintained their memberships in PSEA, as provided in the Board's Decision and Order.

WE WILL, on request, bargain in good faith with PNA as the exclusive representative of the employees in the above appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

POLYCLINIC MEDICAL CENTER OF HARRISBURG

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT act as the exclusive bargaining agent of Polyclinic Medical Center of Harrisburg's employees in the following appropriate unit unless and until we shall have demonstrated our exclusive majority status pursuant to a Board-conducted representation election among the unit employees. The appropriate bargaining unit consists of:

> All employees employed by the POLYCLINIC as RNs and LPNs and excluding all other employees, guards, watchmen and supervisors.

WE WILL NOT give effect to the collective-bargaining agreement of July 1, 1993, between Polyclinic and PSEA, or any extension, renewal, or modification thereof.

WE WILL NOT in any like or related manner restrain or coerce you and members in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL jointly and severally with Polyclinic reimburse, with interest, the above unit employees for all initiation fees, dues, or other moneys illegally exacted from them pursuant to the above unlawful collective-bargaining agreement, provided, however, that reimbursement does not extend to those employees who voluntarily joined and/or voluntarily maintained their memberships in PSEA, as provided in the Board's Decision and Order.

PENNSYLVANIA STATE EDUCATION ASSOCIATION-NEA